

Legatum Institute's 'solution' for the Brexit border is highly problematic



*Legatum Institute's ideas regarding the post-Brexit Irish border are highly problematic. **Katy Hayward** (Queen's University Belfast) and **Maurice Campbell** (Queen's University Belfast) write that these proposals are based on misperceptions of the border, Northern Ireland, as well as the fundamentals of European integration, international trade law and customs practice.*

The paper from the Legatum Institute's 'Special Trade Commission' on what it terms '[the Irish border issue](#)' is to be welcomed for two reasons. The first is that the paper's existence indicates this subject is of interest in London (and the [well-publicised connections](#) of the Legatum Institute means it is likely to have traction). In actual fact, parts of this paper (on 'trusted traders' for example) already appear to have had an airing in [the UK Government Position Paper on Northern Ireland](#).

The second reason is that it gives those of us with a close and direct interest in this topic an opportunity to correct some of its most egregious misperceptions regarding the Irish border and Northern Ireland, and, indeed, of the fundamentals of European integration, international trade law and customs practice.

Opportunities and solutions?

Let us begin with the fundamental reason why the Irish border happens to be an 'issue' in the Brexit negotiations. The paper presents concerns about the border as being merely ones of commerce and logistics, with a hint of security risk thrown in. But no 'solution' to the border 'issue' has substantive credibility or viability if it is composed with such disregard for the rich and multi-layered cross-border relations that have flourished here as a result of the peace process and EU membership. Nor can such a solution be made more convincing by merely downplaying the challenges that it purports to meet.

As has been its take on most aspects of Brexit, the Legatum Institute wishes to present the Irish border as not only 'a problem to be solved', but 'an opportunity' (p.3). And what might this opportunity consist of?

"The opportunity that the people of Northern Ireland in particular have if the UK is more open to the world and engaged in trade liberalising initiatives with many countries, as well as global institutions like the World Trade Organization." (p.3)

Ah-ha. And how might this happen, given the realities of Northern Ireland's economy, the constraints on the capacity of its private sector, and the continued legacy of peripherality in economic development and policy-making? On that, the paper is silent.

It is also silent on the fact that all businesses trading across any customs border will have to find the resource to meet the very significant administrative burden of making electronic declarations for all goods imported and exported. This will have a chilling effect on growth of north/south trade, regardless of whether tariffs are imposed or not. Documentary evidence of proof of origin is another potential new and costly burden. Even if special measures are introduced which help reduce customs burdens at the time and place of import it is highly likely that additional record keeping would be needed to support the maintenance of extended auditable business records.

Without bothering to respond to these specific difficulties, the Legatum Institute returns to its mantra:

"There are so many potential solutions here that it makes no sense to put at risk the considerable trade opportunities that are possible for the UK simply because of misplaced fears about what constitutes customs clearance, and the supposed difficulty of customs administration. We can learn from the experiences of other borders, such as the US-Canada border..." (p.16)

Unfortunately, it is not the case that if you use the words 'solution' and 'opportunity' with enough conviction you can conjure them into existence. As [we have explained elsewhere](#), customs administration *is* difficult – especially in the absence of adequate preparation, capacity for data exchange (ref: the current problems in the development of the customs declaration system due to replace CHIEF), and the paucity of highly experienced customs officers. [We have also shown that](#), while the US-Canada border experience does demonstrate increased efficiency in processing customs clearance through the use of technology, it also shows that successful cross-border trade thrives on regulatory harmonisation and the movement of people to accompany the movement of goods – two points that the UK government seems determined to block post-Brexit.

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Ireland: from EU partner to negotiation hostage

Ah well, never mind north/south cooperation, Legatum would suggest, British-Irish trade is far more important for Ireland. In this vein, the use of tables of figures (pp.12-13) on trade between north and south and Britain and Ireland appears to be solely to disparage the significance of north/south trade. The point, however, is not that the volume of sales from north to south is comparatively low compared to east/west, but rather that 21% of exports [from Northern Ireland](#) go to the Republic, that the vast majority SMEs who export do so across the border, and that supply chains in the most regulatory-sensitive sectors criss-cross the border.

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To emphasise the importance of north/south is not to downplay the significance of east/west cooperation or trade. For peace as with future trading arrangements, good British-Irish relations are absolutely vital for any workable solution. In light of this, the Legatum Institute's cynical representation of Ireland as 'reliant' on the UK is as misjudged as it is misleading.

Indeed, Margaret Thatcher would be shocked to see that even the modest progress in Anglo-Irish relations made under her watch has been thrown to the wind in Legatum's vision of Ireland as a little more than a compliant lapdog. Take this as a 'solution' for agricultural trade across the Irish border:

"NI farmers also need to ensure that they have access to ROI markets and so it will be important to ensure that the ROI does not have regulatory barriers to NI agricultural exports." (p.14)

The reality of the challenge, however, is not to persuade Ireland to lift all barriers to agricultural goods from the north, but rather to ensure that such goods from Northern Ireland would comply with European Single Market regulations for agricultural produce.

Similarly misleading is the claim that the 'UK can use the WTO Agreement on Sanitary and Phyto-sanitary measures (SPS Agreement) to put pressure on the EU to agree suitable mutual recognition provisions on the date of Brexit' (p.14) – even going so far as to suggest that it can take legal action to ensure it can continue to export to member-states.

But if the UK were to do a deal with another third country that would allow the free import of agricultural produce (that yummy prospect of chlorinated chicken), the EU has an absolute right to impose barriers to agricultural goods from the UK in order to effectively maintain food safety standards. Any legal case from the UK against this would not get beyond the initial phone call to the lawyers.

For the Special Trade Commission to get this so wrong either implies wilful ignorance (or misrepresentation) of the laws and norms of EU membership and international trade, or else complete indulgence in delusional old-school British nationalism.

Anglocentric British nationalism is embodied in its description of the Irish border

Some such nationalism – or at least an Anglocentric version of the same – is embodied in its description of the Irish border as one between 'two nations' ('creating a prototype for ensuring a smooth, low friction border between nations', p.5). This is not merely to contravene the niceties of diplomatic language; it is to fundamentally contravene the spirit and law of the [1998 Good Friday \(Belfast\) Agreement](#). That the Irish government retracted its claim over the territory of Northern Ireland was not to suddenly mean that Northern Ireland became a fully integrated part of the British nation. Instead, equal respect is to be shown by both states for the rights, identities and political aspirations of British and Irish, unionist and nationalist in Northern Ireland.

As a motivational tract for Brexiteers – 'out of challenge comes opportunity' (p.5) – this paper may have some value. But as a proposal regarding one of the most sensitive and complex problems to be generated by Brexit, it is politically crass, scientifically meritless and revives a neocolonialist tenor that has no place in post-Agreement British-Irish relations.

This post represents the views of the author and not those of the Brexit blog, nor the LSE.

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